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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PROVIDENT FUNDING ASSOCIATES,
L.P.,

Plaintiff,

v.

LYDIAN PRIVATE BANK,
VIRTUALBANK, A DIVISION OF LYDIAN
PRIVATE BANK, and Does 1 through 20,

Defendants.

Case No.: CV-11-1538 JCS

**STIPULATION AND ORDER STAYING
PROCEEDINGS AND ADJOURNING
DEADLINES**

On August 19, 2011, the Office of the Comptroller of the Currency closed Defendant Lydian Private Bank ("Lydian") and appointed the FDIC as Receiver pursuant to 12 U.S.C. §§ 1464(d)(2) and 1821(c)(5). The FDIC accepted the appointment as Receiver for Lydian that same day.

On September 14, 2011, the Court so-ordered the parties' stipulation substituting the FDIC, as Receiver, for Lydian in this action. (Stip. & Order Substituting FDIC, as Receiver, for Def. Lydian, ECF No. 28.)

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") provides that the FDIC, as Receiver for Lydian, may request a ninety-day stay of this action. *See* 12 U.S.C. § 1821(d)(12)(A)(ii). FIRREA requires the Court to "grant such stay as to all parties."

1 *Id.* § 1821(d)(12)(B). The FDIC as Receiver hereby requests entry of a stay under 12 U.S.C.
 2 § 1821(d)(12).

3 In addition, since Plaintiff must exhaust the FIRREA administrative claims process before
 4 continuing this action against the FDIC as Receiver, a further stay is appropriate until such time as
 5 the FDIC as Receiver acts on the claim to be filed by Plaintiff Provident Funding Associates, L.P.
 6 The FDIC as Receiver has set November 22, 2011 as the last day for creditors of Lydian to file a
 7 claim with the FDIC as Receiver (the “Claims Bar Date”). Pursuant to 12 U.S.C.

8 § 1821(d)(5)(A)(1), the FDIC as receiver has 180 days from the date on which it receives a claim
 9 to determine whether to allow or disallow the claim and to notify the claimant of any
 10 determination with respect to such claim. 12 U.S.C § 1821(d)(6) indicates that a claimant has
 11 sixty days after “the date of any notice of [the FDIC’s] disallowance of [a] claim” to “continue an
 12 action commenced before the appointment of the receiver.” *See id.* § 1821(d)(13)(D) (“Except as
 13 otherwise provided in this subsection, no court shall have jurisdiction over . . . any claim or action
 14 for payment from, or any action seeking a determination of rights with respect to, the assets of any
 15 depository institution for which the [FDIC] has been appointed receiver”); *McCarthy v.*
 16 *FDIC*, 348 F.3d 1075, 1081 (9th Cir. 2003) (“[A]ll claims or actions must be submitted for
 17 administrative resolution. . . . As [the plaintiff] failed to exhaust the claims made in this action, the
 18 district court properly determined that it lacked subject matter jurisdiction. Therefore, dismissal
 19 was required.”).

20 A stay would affect three dates currently scheduled by the Court: the October 10, 2011
 21 deadline for the parties to commence private ADR (*see* Order Referring Case to Private ADR, July
 22 12, 2011, ECF No. 23), the October 14, 2011 deadline for the parties to submit an updated Case
 23 Management Statement (*see* Civil Minute Order, July 25, 2011, ECF No. 25), and the October 21,
 24 2011 case management conference (*see* Case Management and Pretrial Order, July 27, 2011, ECF
 25 No. 26).

26 Therefore, IT IS HEREBY STIPULATED AND AGREED THAT, pursuant to 12 U.S.C.
 27 § 1821(d)(12), the Court should stay this action until the sooner of May 21, 2012 (180 days after
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1 the Claims Bar Date) or 180 days from the date on which the FDIC as Receiver receives Plaintiff's
2 claim. The parties shall jointly notify the Court when the 180 day determination period ends for
3 the FDIC as Receiver to allow or disallow Plaintiff's claim; and

4 IT IS FURTHER STIPULATED AND AGREED THAT the Court should adjourn the
5 October 10, 2011 deadline for the parties to commence private ADR, the October 14, 2011
6 deadline for the parties to submit an updated Case Management Statement, and the October 21,
7 2011 case management conference without date, with the parties and the Court to confer on

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1 rescheduling these dates if and when Plaintiff continues this action following its exhaustion of the
2 FIRREA administrative claims process.

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4 Dated: October 4, 2011

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By: /s/ Neil R. O'Hanlon

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11
12 Dated: October 4, 2011

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25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26 Dated: October 5, 2011

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28 HON. JOSEPH C. SPERO

